

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CRAIG A. CARSON)	
Claimant)	
)	
VS.)	
)	
COLLINS BUS CORPORATION)	Docket No. 262,378
Respondent)	
Self-Insured)	

ORDER

Claimant requests review of an Order entered by Administrative Law Judge Bruce E. Moore on May 22, 2001.

ISSUES

During a preliminary hearing held on April 13, 2001, the Administrative Law Judge verbally directed the respondent to provide the claimant with a list of three physicians with expertise in thoracic outlet syndrome. Respondent provided claimant the list but after questioning the physicians, the claimant concluded two did not have experience in surgically treating thoracic outlet syndrome. The claimant then filed a motion to enforce the preliminary hearing order, dated April 16, 2001, and requested authorization of Dr. Stephen Annest, who was not on the respondent's list.

The Administrative Law Judge denied claimant's motion to enforce and determined the respondent substantially complied with the preliminary hearing order dated April 16, 2001.

The claimant contends the Administrative Law Judge abused his discretion and exceeded his jurisdiction denying the request for authorization of Dr. Annest because the respondent had failed to comply with the April 16, 2001, preliminary hearing order.

The respondent has not filed a brief in this matter.

FINDINGS OF FACT

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

As a result of the preliminary hearing held on April 13, 2001, the Administrative Law Judge determined the claimant was entitled to medical care and ordered the respondent to provide the names of three qualified physicians from which the claimant could designate the

authorized treating physician. At the conclusion of the preliminary hearing, the Administrative Law Judge initially commented that he would give the respondent the opportunity to provide a list of three qualified thoracic surgeons. The Administrative Law Judge in his final comments at the preliminary hearing again specifically noted that the three physicians needed to have some demonstrated experience and expertise in thoracic outlet syndrome, otherwise he would appoint Dr. Annest.

The preliminary hearing order dated April 16, 2001, required respondent to provide the names of three qualified physicians from which claimant would designate the authorized treating physician. If such list was not provided within seven days, it was further provided that Dr. Annest would be designated the authorized treating physician.

The respondent provided claimant with a list of three physicians. Claimant's counsel sent each doctor a letter with a series of questions including how extensive their experience was surgically treating thoracic outlet syndrome. Claimant concluded that only one of the three doctors performed surgery for thoracic outlet syndrome. Accordingly, the claimant alleged the respondent had not complied with the Administrative Law Judge's order to provide a list of three physicians qualified in treating thoracic outlet syndrome.

A telephone conference was held on April 30, 2001, with the Administrative Law Judge and counsel for the parties. The Administrative Law Judge advised counsel that the list provided by respondent substantially complied with the written order and the essence of the Judge's verbal comments. The Judge noted that although he wanted qualified physicians to provide treatment, he was not in a position to tell the doctors that they had to do surgery.

The claimant then filed the motion to enforce and requested Dr. Annest be authorized to provide treatment because the respondent had failed to comply with the Administrative Law Judge's verbal admonitions made during the preliminary hearing that the three physicians have expertise in the surgical treatment of thoracic outlet syndrome.

The Administrative Law Judge denied the claimant's motion concluding that respondent had substantially complied with the terms of the April 16, 2001, order. Claimant appeals contending the Administrative Law Judge exceeded his jurisdiction in failing to designate Dr. Annest as the authorized provider.

CONCLUSIONS OF LAW

Before the Board discusses the merits of this appeal, it must first address whether it has jurisdiction to review the Administrative Law Judge's May 22, 2001, order.

This is not an appeal from an order entered pursuant to the preliminary hearing statute found at K.S.A. 44-534a. An appeal from a preliminary hearing either must allege that the Administrative Law Judge exceeded his or her jurisdiction or one of the jurisdictional issues listed in K.S.A. 44-534a must be raised. This appeal is a result of a hearing held, prior to the final award, on a motion filed by claimant requesting the Administrative Law Judge to enforce a prior preliminary hearing order and appoint a specific authorized treating

physician. For the Board to have jurisdiction to review this order, at this juncture of the proceeding, the appeal would have to be brought pursuant to K.S.A. 44-551(b)(1).

The 1997 Kansas Legislature amended K.S.A. 1996 Supp. 44-551(b)(1). Effective July 1, 1997, the amendment changed the jurisdiction of the Board from reviewing “[a]ll acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge . . .” to review of “[a]ll final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by the administrative law judge . . .”

The Board finds the May 22, 2001, order which is the subject of this appeal, is not a final order, award, modification of an award, or a preliminary hearing award as contemplated by K.S.A. 44-551(b)(1). The Board concludes the order is an interlocutory order made by the Administrative Law Judge during the litigation of a workers compensation case. It is an order that the Administrative Law Judge has authority to make during the trial process and the Board lacks jurisdiction to review the order until it is contained in a final order or award. Moreover, the preliminary hearing statute found in K.S.A. 44-534a, gives the Administrative Law Judge authority to grant or deny medical treatment pending the conclusion of a full hearing on the claim.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the claimant’s appeal from the May 22, 2001, Order entered by Administrative Law Judge Bruce E. Moore, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of August 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: E. Thomas Pyle III, Attorney, McPherson, Kansas
Scott J. Mann, Attorney, Hutchinson, Kansas
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Workers Compensation Director